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03
04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 UNITED STATES OF AMERICA,) CASE NO. CR04-570-MAT
07)
Plaintiff,)
08)
v.) ORDER DENYING MOTION FOR
09) REVIEW OF DETENTION ORDER
VERNON LEON MAXWELL,)
10)
Defendant.)
11)

12 This matter comes before the Court on Defendant's "Emergency Motion and
13 Memorandum for Review of Detention Order". (Dkt. 42.) In his motion, defendant Vernon Leon
14 Maxwell asks the Court to release him on an Appearance Bond and to set a date to allow him to
15 self-report to the Western District of Washington to respond to allegations that he has violated
16 the conditions of probation. For the reasons set forth below, the Court DENIES the motion.

17 **I. Procedural Background**

18 On October 7, 2004, defendant was charged by Complaint with two counts of wilful and
19 unlawful failure to pay child support for a minor child who resides in another state. (Dkt. 1.) At
20 his first appearance, defendant was ordered released on an appearance bond with conditions of
21 supervision and the posting of \$20,000 or an Agreement to Forfeit \$20,000 equity in real property.
22 (Dkt. 4.) A grand jury indicted defendant on December 22, 2004 and an order was entered

01 continuing the conditions of release. (Dkt. 9, 10.) At defendant's arraignment, this Court inquired
02 into the reason that defendant had not yet posted bail. (Dkt. 11.) A bail review hearing was held,
03 and bail was reduced to \$5,000, which was posted by the defendant. (Dkt. 13, 14.)

04 On January 24, 2005, defendant's pretrial supervisor filed a petition alleging that defendant
05 had violated the conditions of release by failing to maintain residence with his mother as required,
06 by traveling to Georgia without permission, by failing to report within 48 hours of release from
07 custody, and by further failing to report as directed. (Dkt. 19.) Defendant was arrested and taken
08 into custody. A change of plea hearing was held on March 11, 2005, at which the case was
09 reassigned to the undersigned Magistrate Judge and defendant pled guilty to Count II of the
10 Indictment, charging Wilful Failure to Pay Child Support, a Class B misdemeanor. (Dkt. 26.)
11 Defendant was released on an amended appearance bond. (Dkt. 27.)

12 On August 3, 2005, defendant was sentenced to five years probation and restitution in the
13 amount of \$49,276.61. (Dkt. 32.)

14 On July 6, 2006, defendant admitted violating the conditions of probation by committing
15 the crime of communicating threats, committing the crime of possession of marijuana, failing to
16 notify the probation officer within 72 hours of being arrested or contacted by law enforcement,
17 and using marijuana. (Dkt. 36.) Defendant was sentenced to 30 days of electronic monitoring, 200
18 hours of community service, with the remaining conditions of probation remaining in effect.

19 On May 27, 2008, defendant's probation officer filed a report alleging violation of the
20 conditions of probation, and asking for the issuance of a warrant under seal. The alleged
21 violations included failure to pay restitution, failing to submit monthly reports, the use of
22 marijuana, the failure to notify each jurisdiction where he has outstanding child support obligations

01 for the purpose of obtaining reassessment of those obligations, and being convicted of
02 Communicating Threats. The warrant was issued by The Hon. John L. Weinberg. (Dkt. 40.)

03 Defendant was arrested and appeared before the Hon. David C. Keesler, United States
04 Magistrate Judge, in the Western District of North Carolina at Charlotte. On motion of the
05 United States, Judge Keesler ordered defendant detained pending transfer to this District for
06 revocation proceedings.

07 Defendant asks this Court to review Judge Kessler's detention order.

08 **II. Standard of Review**

09 This Court reviews the detention order of a magistrate judge de novo. *United States v.*
10 *Koenig*, 912 F.2d 1190, 1191 (9th Cir. 1990). If the arrest is made in a different district than the
11 charging district, the authority to review the magistrate judge's detention order resides with the
12 district court where the prosecution is pending. *United States v. Evans*, 62 F.3d 1233, 1237 (9th
13 Cir. 1995.)

14 Rule 32.1(a)(a) of the Federal Rules of Criminal Procedure provides that a defendant may
15 be released pending a revocation hearing, pursuant to 18 U.S.C. § 3143(a), which governs
16 eligibility of release pending sentence or pending notice of appeal. That section provides for
17 release only upon a finding by clear and convincing evidence that the person is not likely to flee
18 or pose a danger to the safety of any other person or the community if released. *Id.*, § 3143(a).
19 The burden of proof is on the defendant. FRCP 32.1(a)(6)¹.

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22 ¹ Both the United States and the defendant incorrectly cite the standard for release pending
trial. 18 U.S. C. § 3142.

III. Analysis

Although the United States Attorney for this District acknowledges that he did not request detention in this matter, he notes that he did not take into account the danger that defendant might pose to other. The transcript of the detention hearing in the Western District of North Carolina shows that Judge Keesler considered this factor. The AUSA proffered information about alleged threats of physical assault made by the defendant in front of his two young children, one of which was a six month baby in his mother's arms. The court considered information from a 2000 presentence report in which the defendant pled no contest to another physical assault. Although the individual was present in court and told the court that she did not feel she was in any danger, she also admitted to a more recent incident in which she sought a protective order. The judge found that the proffered information did not rebut the presumption of risk of danger or nonappearance. In so finding, the judge noted the defendant's prior criminal record which includes a weapons charge, multiple assault and battery charges, together with aggravated stalking charges, and a family violence charge from 2004 in which the victim allegedly attempted to escape several times during the day but the defendant caught her and assaulted her, giving a false name when arrested.

The defendant has not established by clear and convincing evidence that he does not pose a danger to any person or to the community. The defendant has demonstrated on numerous occasions his propensity to disregard court orders. He is alleged to have threatened the mother of two of his children in their presence. His prior criminal record includes crimes of violence.

IV. Conclusion

Considering the evidence on a de novo basis, this Court finds that the defendant should be

01 detained pending transfer to this District to address pending allegations that he violated the
02 conditions of probation.

03 DATED this 16th day of June, 2008.

04 

05 Mary Alice Theiler
06 United States Magistrate Judge